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UNITED STATES DISTRICT COURT  
DISTRICT OF NEVADA

15 ANTHONY THOMAS, ) 3:10-cv-00608-HDM-VPC  
16 Plaintiff, )  
17 vs. ) ORDER  
18 PETZING, et al., )  
19 Defendant. )

The court has considered the report and recommendation of the  
United States Magistrate Judge (#34) filed on September 26, 2011,  
in which the magistrate judge recommends that this court enter an  
order denying defendants' motion to dismiss (#14), but dismissing  
with prejudice all claims against the defendants in their official  
capacities based on Eleventh Amendment immunity. The defendants  
objected to the report and recommendation on October 13, 2011  
(#35). No response was filed by the plaintiff, and the time for

1 filing a response has expired.

2 On a motion to dismiss, the court reviews a complaint to see  
 3 if, on its face, it contains sufficient factual matter, accepted as  
 4 true, to state a plausible claim for relief.<sup>1</sup> *Ashcroft v. Iqbal*,  
 5 129 S. Ct. 1937, 1949 (2009). Where a plaintiff appears pro se,  
 6 the court construes the pleadings liberally and "afford[s the]  
 7 plaintiff the benefit of any doubt." *Karim-Panahi v. L.A. Police*  
 8 *Dep't*, 839 F.2d 621, 623 (9th Cir. 1988).

9 With these standards in mind, the court has considered the  
 10 pleadings and memoranda of the parties and other relevant matters  
 11 of record. It has made a review and determination in accordance  
 12 with the requirements of 28 U.S.C. § 636 and applicable case law.  
 13 Therefore, and good cause appearing, the defendants' motion to  
 14 dismiss (#14) the plaintiff's claims against the defendants in  
 15 their official capacities with prejudice is granted. In all other  
 16 respects the defendants' motion to dismiss is denied.

17 **IT IS SO ORDERED.**

18 DATED: This 12th day of December, 2011.

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UNITED STATES DISTRICT JUDGE

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<sup>1</sup> The court agrees with the magistrate judge that defendants' motion to dismiss should not be construed as a motion for summary judgment.